

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARK CHEATUM,

Petitioner,

v.

Case No. 2:06-cv-286
HON. R. ALLAN EDGAR

GERALD HOFBAUER,

Respondent.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on June 19, 2009. The Report and Recommendation was duly served on the parties. The Court has received objections from petitioner. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Clearly, as stated by the Michigan Court of Appeals, there was sufficient evidence presented to convict petitioner of assault. Further, petitioner has failed to show that the court improperly instructed the jury based upon the totality of the instructions given. Petitioner is correct that he never filed a motion for relief for judgment. Petitioner asserts ineffective assistance of counsel as cause for his procedural default. However, no error occurred because petitioner's rights were not violated by the trial court's jury instruction. Counsel acted reasonably in not objecting to the jury instructions on these grounds.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #28) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED as to each issue raised by the petitioner in this application for habeas corpus relief because petitioner has failed to make a “substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Dated: 9/22/09

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE